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Confidential -- For Settlement Purposes Only

Pdf via email

Peter Kautsky, Esquire
Rachel Evans, Esquire
United States Department of Justice
Environmental Enforcement Section
P.O Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611

Re: South Plainfield Site

Dear Peter and Rachel:

Thank you for your February 17, 2011 letter offering a preliminary articulation of the shape of a potential settlement of the South Plainfield Site with Cornell Dubilier Electronics, Inc. ("CDE"). CDE is encouraged that the structure each side is discussing is almost the same and thought it might be helpful to set forth in writing its perspective on the key elements of the settlement:

1. **Parties.** On the PRP side, the party would be CDE and possibly FPE; on the government side, the parties would be the United States (including the EPA, any natural resource damages trustees, and the Department of Defense agencies who succeeded to the liability for the World War II operations at the South Plainfield Site) and the State of New Jersey (including the DEP and any NRD trustees).

2. **Scope of Protection.** The governments and NRD trustees will covenant not to sue and provide contribution protection to CDE and FPE¹ with respect to any CERCLA liability for the South Plainfield Site (including liability for hazardous substances migrating from the Site). CDE will give a parallel covenant not to sue the governmental parties.

¹ In order to avoid any issue with FPE about the proceeds from the Allstate settlement for South Plainfield and to ensure finality for CDE, we believe it will be necessary for the government to provide a covenant not to sue FPE as well as CDE.

CDE's protection will be subject only to an ability to pay reopener based on misrepresentations by CDE as to its financial condition.

3. **CDE's Undertakings.** CDE appreciates that the structure of the settlement proposed by the government recognizes that CDE has a limited ability to pay; however, one significant concern is that the government is seeking in this settlement to obtain all of CDE's ability to pay and not merely its ability to pay with respect to South Plainfield. While the structure of the settlement may eventually provide CDE the resources from the insurance litigation with which to resolve other environmental claims, the settlement will not do so in the short term. That means that CDE will have to continue to finance its other environmental matters, such as the Parker Street, New Bedford litigation, in advance of obtaining any resources from the insurance litigation. For that reason, CDE proposes that it be permitted to make its payments over time.

In particular, CDE will make a payment of \$750,000 to the governmental parties in three equal annual installments beginning on the effective date of the settlement. CDE will also pay \$3.25 million into a litigation escrow fund in three equal annual installments beginning on the effective date of the settlement.. That litigation escrow fund will be used to pay legal fees and costs in the pending insurance coverage case, Home Insurance Company v. Cornell-Dubilier Electronics, Inc., C.A. No. MER-L-5192-96, as consolidated (N.J. Super. Ct).

After the execution of the settlement, all proceeds recovered from the coverage case will be used to resolve environmental claims against CDE, known and unknown, as follows (all of the dollar ranges include the \$22.5 million from the Allstate settlement²):

Ins. Proceeds	\$47,500,000	\$72,500,000	\$97,500,000	\$122,500,000	\$172,500,000
South Plainfield	76.92%	78.00%	79.50%	81.50%	84.00%
Dismal Swamp	12.82%	12.22%	11.39%	10.28%	8.89%
All others	10.26%	9.78%	9.11%	8.22%	7.11%

CDE's rationale is to start the allocation by assuming that the South Plainfield liability is in the range of \$300 million, Ex 7(a) - Int w Enf. is in the range of \$50 million, and all others are in the range of \$40 million (based on the fact that the Parker Street Site in New Bedford has been estimated in the range of \$30 million, and CDE's Venice liability has already cost roughly \$10 million and might cost many multiples of that if groundwater cleanup is required or if there are toxic tort claims). CDE believes that as the insurance recovery increases in size the share allocated to the South Plainfield site should increase by a slightly

² CDE believes it is appropriate to include the Allstate \$22.5 million settlement in the proceeds from the insurance litigation since it reflects a significant value which is being transferred from the insurers; however, CDE understands that it would not be fair for CDE's share of the insurance proceeds to come from the Allstate settlement money given that the Allstate settlement was not generated from work undertaken in connection with the litigation escrow fund.

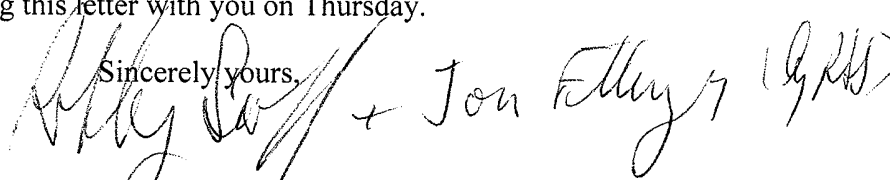
disproportionate amount to reflect the greater risk of cost underestimates being larger at a larger dollar site. In determining how much of CDE's share of the insurance process would go to South Plainfield and how much to other environmental matters, CDE believes it is helpful in negotiating the settlement to show a distinct share for Ex 7(a) - Int w Enf. and a distinct share for other environmental matters. If the government would rather combine the percentages for both the Ex 7(a) - Int w Enf. and Other environmental matters, CDE is amenable to doing so in the Consent Decree.

No portion of the litigation escrow fund will be transferred back to CDE. CDE will be obligated to make the installment payments to the litigation escrow fund even if the insurance litigation is settled prior to all of the installments being made. Any unexpended sums in that escrow after the insurance coverage action has been resolved will be treated as additional sums recovered in the insurance litigation and distributed in accordance with the above-table. In this way, CDE will not have any incentive to settle early simply to regain the dollars in the litigation escrow fund.³

We believe this structure provides a basis for a settlement which allows the government to obtain the immediate \$22.5 million from the Allstate settlement and \$750,000 in an ability to pay payment from CDE. In addition, the settlement provides a mechanism by which CDE can pursue its claims against its insurers with the proceeds devoted to reimbursing the United States for its response costs at the South Plainfield site and providing CDE with resources to address its other environmental matters.

We look forward to discussing this letter with you on Thursday.

Sincerely yours,


Robert S. Sanoff
Jonathan Ettinger

RSS:

cc: Sarah Flanagan, Esquire

³ Although CDE believes there is a fair prospect that a \$3.25 million escrow fund will be sufficient to pursue the insurance litigation to conclusion, Foley Hoag is willing to consider providing a contingent fee arrangement if the escrow fund is exhausted.